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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,042

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07/11/2006

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EXAMINER

CONLEY, SEAN EVERETT

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/606,042

Applicant(s)

PENMAN ET AL.

Examiner

Sean E. Conley

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2006 and 21 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-15, 17, 18 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-15, 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/1/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed March 27, 2006 has been received and considered for examination. Claims 1-7, 9-15, 17-18 and 21-24 are pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Pikor (U.S. Patent No. 3,839,006).

Regarding claims 1 and 6, Pikor discloses a heater comprising a flexible conductor assembly (Nichrome wire (10)) having a first end and a second end (see ends of wire (10)) the Nichrome wire (10) being bendable and configurable, wherein a first electrical conductor is electrically connected to the first end of the conductor assembly and a second electrical conductor is electrically connected to the second end of the conductor assembly (see AC line cord (12) which houses the two wires attached to the ends of wire (10)). An electrical plug (connector (17)) is electrically connected to the first and second electric al conductors (AC line cord (12)) in order to supply electricity to the flexible and configurable conducting wire (10) (see figures 1-4; col. 2,

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line 38 to col. 4, line 5). The flexible and configurable conductor assembly is capable of being adapted to fit around upon an external surface of a sidewall of a heat-conducting container that contains a candle with an aroma, such that the flexible and configurable conductor assembly can heat the container sufficient to heat the candle and release an aroma.

Regarding claim 2, Pikor discloses that the conductor assembly comprises a conductor (Nichrome wire (10) – see col. 2, lines 48-67).

Regarding claims 3 and 5, Pikor discloses that the conductor assembly further comprises an insulating fiberglass cover covering a portion of the conductor (see figures 1 and 2; col. 2, lines 48-67).

3. Claims 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pikor (U.S. Patent No. 3,839,006).

Regarding claim 21, Pikor discloses an electrically heated flexible and configurable heat conductor assembly (see figures 1-4; col. 2, line 38 to col. 3, line 25). The device is capable of being adapted to fit around upon an external surface of a sidewall of a heat-conducting container that contains a candle with an aroma, such that the flexible and configurable conductor assembly can heat the container sufficient to heat the candle and release an aroma.

Regarding claims 22-24, the device of Pikor is flexible and configurable to form a partial wrap, a single wrap, or multiple wraps around the article being heated (see figures 1 and 4; col. 3, line 53 to col. 4, line 5). Therefore, the device is capable of being configured as recited in claims 21-24.

4. Claims 1-3, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallagher (U.S. Patent No. 5,831,242 A).

Regarding claim 1, Gallagher discloses a heater (10) comprising: a flexible and configurable conductor assembly (wire (16) comprised of wires (20) and (22)), having a first end (32) and a second end (36); a first electrical conductor (30) electrically connected to said first end (32) of said conductor assembly; a second electrical conductor (34) electrically connected to said second end (36) of said conductor assembly (16); and an electrical plug (26) electrically connected to said first electrical conductor and said second electrical conductor (see figure 1; col. 2, lines 20-57). The flexible and configurable conductor assembly is capable of being adapted to fit around upon an external surface of a sidewall of a heat-conducting container that contains a candle with an aroma, such that the flexible and configurable conductor assembly can heat the container sufficient to heat the candle and release an aroma.

Regarding claim 2, Gallagher discloses a conductor assembly that further comprises a conductor. Specifically, the conductor assembly is a nickel chromium resistive wire which is a conductor (see col. 2, lines 28-29).

Regarding claim 3, Gallagher discloses a conductor assembly that further comprises an insulating cover (23) covering a portion of said conductor (see figure 1; col. 2, lines 44-45).

Regarding claim 6, Gallagher discloses a conductor that is bendable. Specifically, it is shown in figure 1 that the conductor (wire assembly (16)) has been

bent into a coiled position. Further, it is well known that all materials are bendable to some degree, including the nickel chromium resistive wire of wire assembly (16).

5. Claims 1-3, 5, and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Barnhart (U.S. Patent No. 6,413,476 B1).

Regarding claim 1, Barnhart discloses a candle container (3), having an interior and exterior; an aromatic candle (102) within the interior of the candle container (102); a flexible and configurable conductor assembly (electric heating element (7) attached to conductive cup (6)), having a first end and a second end, said conductor assembly wrapped about and in contact with said exterior of said candle container (3); a first electrical conductor (16) electrically connected to said first end of said conductor assembly ((7) and (6)); a second electrical conductor (14) electrically connected to said second end of said conductor assembly; and an electrical plug (see power cord (20)) electrically connected to said first and second electrical conductors (see figures 1-5; col. 2, lines 12-47; col. 3, line 41 to col. 4, line 57). The flexible and configurable conductor assembly (electric heating element (7) attached to conductive cup (6)) is capable of being adapted to fit around upon an external surface of a sidewall of a heat-conducting container that contains a candle with an aroma, such that the flexible and configurable conductor assembly can heat the container sufficient to heat the candle and release an aroma.

Regarding claim 2, Barnhart discloses that the conductor assembly comprises a conductor. Specifically, Barnhart teaches that the heat is dissipated from heating

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element (7), which is a conductor, through heat conductive cup (6), which is another conductor, to the candle container (3) (see col. 4, lines 47-58).

Regarding claims 3 and 5, Barnhart discloses that the conductor assembly further comprises an insulating cover covering a portion of the conductor. Specifically, Barnhart discloses that the conductor assembly ((6) and (7)) is located within a plastic housing (12) which is the insulating cover (see figure 2; col. 3, lines 45-50). It is well known that plastic is an electric insulator and the plastic housing (12) covers a portion of the conductor (either heating element (7) or conductive cup (6)).

Regarding claim 7, Barnhart discloses that the conductor (heating element (7)) is a bendable tube (see figures 3-4).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart as applied to claims 2 above, and further in view of Theilacker et al. (U.S. Patent No. 5,138,138).

Barnhart fails to specifically teach the material used for the heating element.

Theilacker et al. discloses a heating system for an operating table that utilizes a heating pad (2) which comprises a heating conductor (16) made up of an electric conductor (18) that consists of an aluminum wire or aluminum sheet (see col. 3, line 67

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to col. 4, line 20; col. 8, line 60 to col. 9, line 33). This reference has been relied upon to teach that it is well known to use aluminum wire as an electric conductor to dissipate heat.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Barnhart and use aluminum as the material for the conducting heating element (7) as taught by the heating pad of Theilacker et al. since it has been held that aluminum is a known conductor of heat. Additionally, although Barnhart fails to specifically teach the material of the conductor, modifying the material would have been obvious at the time of applicant's invention because of the legal precedent established by prior case law In Re Aller, 105 USPQ 23 (CCPA 1955) which states that the use of preferred materials discovered by routine experimentation is ordinarily within the skill of the art.

### ***Response to Amendment***

7. The declaration filed under 37 CFR 1.132 filed March 27, 2006 is insufficient to overcome the rejections of the claims as set forth in the last Office action because: the cited prior art to Barnhart, Gallagher, and Pikor all teach a flexible and configurable heating device as recited in the claims that are capable of achieving the intended use claimed by the applicant. The applicant first argues in his response, see number 18 on page 4 of the declaration, that the construction as claimed is not disclosed or suggested by the cited references. Furthermore, the applicant argues, see number 19 on page 4 of the declaration, that it is not disclosed or suggested by the references that a user



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could obtain any of the advantages of the present invention, in particular (1) the ability to use with essentially any container, and (2) achieve control of wax melting and of aroma release.

The examiner respectfully disagrees. The cited prior art does indeed disclose the claimed construction of the heating device as recited in claims (see rejections above). Although the claimed intended use is not specifically disclosed, the device of the prior art needs only to be capable of achieving the claimed intended use since the intended use is not given any patentable weight. Furthermore, with regards to the applicant's second argument, the ability to use with any container and the ability to control wax melting are intended use limitations. Again, the claimed intended use is not given patentable weight. The devices of the cited prior art references are capable of achieving the intended use as recited in the claims.

8. Claims 8, 16, 19, and 20 have been canceled therefore rendering the rejections of these claims moot.

### ***Response to Arguments***

9. Applicant's arguments see pages 8-13, filed March 27, 2006, with respect the rejections of claims 1-7 have been fully considered but they are not persuasive.

The applicant argues that the cited references of Barnhart and Gallagher fail to teach a system adapted for heating a container for a candle that has a flexible and configurable conductor. The examiner respectfully disagrees because the applicant is

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arguing the limitations directed to the intended use of the heating device. Barnhart and Gallagher both disclose heating devices that include a flexible and configurable conductor assembly that can be adapted to fit around upon an external surface of a sidewall of a heat-conducting container that contains a candle with an aroma, such that the flexible and configurable conductor assembly can heat the container sufficient to heat the candle and release an aroma. Although the claimed intended use is not specifically disclosed by the prior art, the device of the prior art needs only to be capable of achieving the claimed intended use since the intended use is not given any patentable weight. Therefore, claims 1-7 remain rejected in view of the references to Barnhart and Gallagher.

10. Applicant's arguments, see 8-13, filed March 27, 2006, with respect to the rejections of claims 9-15 and 17-18 have been fully considered and are persuasive. Therefore, the rejections of claims 9-15 and 17-18 have been withdrawn.

***Allowable Subject Matter***

11. Claims 9-15 and 17-18 are allowed.

The following is an examiner's statement of reasons for allowance: The prior art, alone or in combination, fails to teach or fairly suggest an aromatic container heater assembly comprising a heat conducting candle container housing an aromatic candle wherein a flexible and configurable conductor assembly is wrapped about and in contact

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with the exterior surface at a side wall of the candle container. The closest prior art is Tanner et al. (U.S. Patent No. 6,627,857 B1) and Barnhart (U.S. Patent 6,413,476).

Tanner et al. and Barnhart both disclose devices for heating containers holding a scent candle in order to release an aroma. However, both of the devices disclose heaters that are situated at the bottom of the candle container. Neither of the devices of Barnhart or Tanner et al. teach or suggest an aromatic container heater assembly comprising a heat conducting candle container housing an aromatic candle wherein a flexible and configurable conductor assembly is wrapped about and in contact with the exterior surface at a side wall of the candle container.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

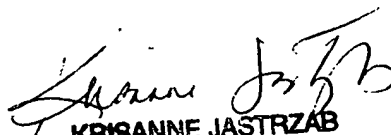
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 30, 2006

SEC *il.*

  
KRISANNE JASTRZAB  
PRIMARY EXAMINER